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INTERSTATE COMMERCE COMMISSION

MARATHON LEASING COMPANY

EQUIPMENT TRUST

Series 3

EQUIPMENT TRUST AGREEMENT

Dated as of October 1, 1971

By and Between

BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON,

Trustee

and

MARATHON LEASING COMPANY

EQUIPMENT TRUST AGREEMENT, dated as of October 1, 1971, by and between BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON, a national banking association incorporated and existing under the laws of the United States, as Trustee (hereinafter called the Trustee); and MARATHON LEASING COMPANY, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the Company) .

WHEREAS, the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described herein; and

WHEREAS, title to such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder until title is transferred under the provisions hereof; and

WHEREAS, Marathon Leasing Company 9-1/2% Equipment Trust Certificates due October 1, 1981 (Series 3) (hereinafter called the Trust Certificates), are to be issued and sold in the aggregate amount not exceeding \$950,000, and the aggregate proceeds (excluding premium and accrued interest, if any) of such sale which shall equal the aggregate principal amount of the Trust Certificates so issued and sold, shall constitute a fund to be known as the Marathon Leasing Company Equipment Trust, Series 3, to be delivered by the Trustee from time to time to the Company to reimburse the Company for the Cost of the Trust Equipment as provided herein; and

WHEREAS, the texts of the Trust Certificates are to be substantially in the following form:

[FORM OF TRUST CERTIFICATE]

\$ _____

No. _____

MARATHON LEASING COMPANY

9-1/2% EQUIPMENT TRUST CERTIFICATE

Due October 1, 1981

(Series 3)

Total Authorized Issue \$950,000

BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON,

Trustee

BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON, Trustee

(hereinafter called the Trustee) under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of October 1, 1971, by and between the Trustee and MARATHON LEASING COMPANY, a Delaware corporation (hereinafter called the Company), hereby certifies that

_____ or registered assigns is entitled to an interest of \$ _____ in Marathon Leasing Company Equipment Trust, Series 3, payable October 1, 1981, upon surrender of this Certificate to the Trustee at its principal corporate office in Houston, Texas, and to interest thereon, payable on April 1 and October 1 in each year (hereinafter called Interest Payment Dates), at the rate of 9-1/2% per annum from the Interest Payment Date next preceding the date of this Certificate to which interest on the Trust Certificates has been paid (unless the date hereof is a date to which interest has been paid, in which case from the date hereof) or, if no interest has been paid on the Trust Certificates since the original issue date (as defined in the Agreement) of this Certificate, from the Interest Payment Date next preceding such original issue date (unless such original issue date is an Interest Payment Date, in which case such original issue date), until the principal amount represented by this Certificate shall have become due, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 10% per annum. The interest so payable on any Interest Payment Date will, subject to certain exceptions provided in the Agreement, be paid to the person in whose name the Certificate (or one or more Predecessor Certificates as defined in the Agreement) is registered at the close of business on the September 15 or March 15 (whether or not a business day), as the case may be, next preceding such Interest Payment Date. Payment of the principal of and interest on the Certificate will be made at said office of the Trustee in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other monies received by the Trustee and applicable to such payment under the provisions of the Agreement.

This Certificate is one of an authorized issue of Trust Certificates in an aggregate amount not exceeding \$950,000, all maturing on October 1, 1981, and issued or to be issued under the Agreement, pursuant to which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the registered holders of the Trust Certificates issued hereunder. Reference is made to the Agreement (copies of which are on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents.

As a compulsory sinking fund for the Trust Certificates, the Agreement provides (i) for the payment by the Company to the Trustee, on or before October 1, 1972, of rental in an amount sufficient to redeem (a) \$95,000 aggregate principal amount of Trust Certificates or (b) a sum equal to the outstanding principal amount of the Trust Certificates divided by the number of dates upon which such rental is due (including the date upon which payment is then due and the date of maturity), whichever is less, and (ii) for the payment of rental on each October 1 thereafter to and including October 1, 1981, in an amount calculated in the same manner as provided in clause (i) immediately above. As more fully provided in the Agreement, the Trust Certificates are subject to redemption through the application of such rental on October 1, 1972, and on each October 1 thereafter to and including October 1, 1981, on not less than thirty (30) days prior notice given as provided in the Agreement, at 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption. On or before October 1 in any year commencing October 1, 1972, the Company may pay additional rental to the Trustee as a voluntary sinking fund to redeem all or any part of the principal amount of Trust Certificates, without payment of penalty or premium, as the Company may at its option specify. The Agreement further provides that the Company may, at its option, credit against such rental Trust Certificates acquired otherwise than through the operation of the sinking fund, such credit to be in an amount equal to the aggregate principal amount of such Trust Certificates.

The Trust Certificates are issuable as fully registered Trust Certificates in denominations of \$1,000 or any multiple of \$1,000. The several denominations of Trust Certificates are interchangeable upon presentation thereof for such purpose at said office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges as provided in the Agreement.

This Certificate is transferable by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at its said office of this Certificate accompanied by a written instrument of transfer duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new Trust Certificate or Certificates in authorized denominations for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any knowledge or notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount represented

by this Certificate may become or be declared due and payable in the manner and with the effect provided in the Agreement.

This Certificate shall not be valid or become obligatory for any purpose until it has been manually signed by an authorized officer of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its Trust Officers, by his signature or a facsimile thereof, and its corporate seal or a facsimile thereof to be hereby fixed or hereon imprinted and to be attested by one of its authorized officers, by his signature.

Dated as of _____, 197__

BANK OF THE SOUTHWEST NATIONAL ASSOCIATION,
HOUSTON, Trustee

By _____
Trust Officer

Attest:

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof at maturity, whether by declaration or otherwise, as hereinafter more particularly provided, with interest to said date of maturity, as hereinafter provided, payable semi-annually on October 1 and April 1 in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the form hereinbefore set forth;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

ARTICLE ONE

Definitions

Section 1.01. Definitions. The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified; all other terms used in this Agreement which are defined in the Trust Indenture Act of 1939 or which are by reference therein defined in the Securities Act of 1933 (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of this Agreement.

Affiliate of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under direct or indirect common control with, such corporation. For the purposes of this definition, control (including controlled by and under common control with), as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

Company shall mean Marathon Leasing Company and any successor or successors to it complying with the provisions of Section 5.09.

Corporate Trust Office shall mean the principal office of the Trustee in Houston, Texas, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, at the date of execution of this Agreement, located at 910 Travis, Houston, Texas.

Cost, when used with respect to Equipment shall mean the actual cost thereof, including direct cost of labor and material, overhead, and manufacturing profit.

Deposited Cash shall mean the aggregate of (a) cash on deposit with or to the credit of the Trustee as provided in the first paragraph of Section 2.01 and, when required or indicated by the context, any Investment Securities purchased by the use of such cash pursuant to the provisions of Section 9.05, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 5.04(B)(1)(b) and on deposit with or to the credit of the Trustee.

Engineer's Certificate shall mean (a) when required from the Company a certificate signed by the President or a Vice President of the Company or by any other officer or employee of the Company appointed by the Company for such purpose and approved by the Trustee.

Equipment shall mean standard-gauge railroad equipment (other than passenger or work equipment), first put into use on or after June 1, 1970 except that, for the purposes of Sections 5.06 and 5.08, where railroad equipment is being conveyed to the Trustee (A) in replacement of Trust Equipment (i) sold or contracted to be sold by the Company or (ii) which has become worn out, lost, destroyed or unsuitable for use or (B) against the payment by the Trustee to the Company of cash deposited pursuant to Section 5.06 or 5.08 in respect of Trust Equipment (i) so sold or contracted to be sold or (ii) which has become worn out, lost, destroyed or unsuitable for use, Equipment means railroad equipment (other than passenger or work equipment) irrespective of when first put into use.

Event of Default shall mean any event specified in Section 6.01 to be an Event of Default.

The word holder, when used with respect to Trust Certificates, shall mean the registered holder of such Trust Certificates and shall include the plural as well as the singular number.

Interest Payment Dates shall mean October 1 and April 1 in each year.

Investment Securities shall mean (a) bonds, notes or other debt securities which are issued by the United States Government or any Agency thereof or which are guaranteed as to principal and interest by the United States Government; (b) bonds, notes and other debt securities which are direct obligations of any state or territory of the United States or of any county, city, district or other subdivision of any such state or territory, provided that such security shall mature within 12 months of the date when it is purchased by the Trustee; (c) bonds, debentures, equipment trust certificates and other debt securities (other than commercial paper) which are direct obligations of any domestic corporation having a net worth of not less than \$25,000,000, provided that such corporate security matures or has been called for payment within 12 months of the date when it is purchased by the Trustee; (d) commercial paper issued by any domestic corporation engaged primarily in business within the United States and having a net worth of not less than \$25,000,000, provided such commercial paper matures not more than one year from the date of its issuance, and provided further that except for the length of maturity such paper meets the requirements of the Federal Reserve Bank for paper which it will accept for rediscount from its member banks; and (e) certificates of deposit of or time deposits in banks or trust companies (including the Trustee) incorporated and doing business under the laws of the United States of America or one of the states thereof having a capital and surplus aggregating at least \$25,000,000.

Officers' Certificate shall mean a certificate signed by the President or any Vice President and by the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary of the Company. Each such certificate shall include the statements provided for in Section 13.03 if and to the extent required by the provisions thereof.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel who may be an employee of or counsel to the Company or other counsel satisfactory to the Trustee. Each such opinion shall include the statements provided for in Section 13.03 if and to the extent required by the provisions thereof. The acceptance by the Trustee of, and its action on, an Opinion of Counsel shall be sufficient evidence that such counsel is satisfactory to the Trustee.

Original issue date of any particular Trust Certificate shall mean the earlier of (a) the date of such Trust Certificate or (b) the date of the first Predecessor Certificate issued to evidence all or a portion of the same interest in the trust created hereunder as that evidenced by such particular Trust Certificate; provided that, if Predecessor Certificates of such particular Trust Certificate have different original issue dates, the portions of such particular Trust Certificate attributable to such Predecessor Certificates shall be deemed to have such different original issue dates.

Predecessor Certificates of any particular Trust Certificate shall mean every previous Trust Certificate evidencing all or a portion of the same interest in the trust created hereunder as that evidenced by such particular Trust Certificate; and, for the purposes of this definition, any Trust Certificate executed and delivered under Section 2.06 in lieu of a lost, destroyed or stolen Trust Certificate shall be deemed to evidence the same interest in the trust created hereunder as the lost, destroyed or stolen Trust Certificate.

Principal shall include any premium.

Request shall mean a written request for the action therein specified, delivered to the Trustee, dated not more than ten days prior to the date of delivery to the Trustee and signed on behalf of the Company by the President or a Vice President of the Company.

Responsible Officer shall mean the chairman of the board of directors, the president, every vice president, the cashier, and every other officer or assistant officer of the Trustee other than those specifically mentioned above, to whom any corporate trust matter is referred because of his knowledge of, or familiarity with, the particular subject.

Trust Certificates shall mean Marathon Leasing Company 9-1/2% Equipment Trust Certificates due October 1, 1981 (Series 3) issued hereunder.

Trust Equipment shall mean all Equipment at the time subject to the terms of this Agreement.

Trust Indenture Act of 1939 shall mean the Trust Indenture Act of 1939 as in force at the date of this Agreement as originally executed.

Trustee shall mean the Bank of the Southwest National Association, Houston, and, subject to the provisions of Article Nine, any successor as trustee hereunder.

The words herein, hereof, hereby, hereto, hereunder and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

Section 2.01. Issuance of Trust Certificates. The aggregate proceeds from the sale of any of the Trust Certificates shall, forthwith upon the issuance thereof, be deposited in cash with the Trustee and thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct, by Request, Trust Certificates in the aggregate principal amount so sold. The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of \$950,000, except as provided in Sections 2.05, 2.06 and 3.02.

Section 2.02. Interests Represented by Trust Certificates; Maturity; Interest; Denominations. Each of the Trust Certificates shall represent an interest in the amount therein specified in the Trust created hereunder.

The Trust Certificates shall mature on October 1, 1981. The Trust Certificates shall be in denominations of \$1,000 or any multiple thereof.

Each of the Trust Certificates shall be dated the date of its execution by the Trustee, and, except as provided in this Section 2.02, shall bear interest on the principal amount specified therein, payable semi-annually on the Interest Payment Dates in each year, at the rate of 9-1/2% per annum from the Interest Payment Date next preceding the date of such Trust Certificates to which interest on the Trust Certificates has been paid (unless the date of such Trust Certificate is a date to which interest has been paid, in which case from the date of such Trust Certificate) or, if no interest has been paid on the Trust Certificates since the original issue date of such Trust Certificates, from the Interest Payment Date next preceding such original issue date (unless such original issue date is an Interest Payment Date, in which case from such original issue date) until the principal amount represented by such Trust Certificates shall have become due, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 10% per annum. The person in whose name any Trust Certificate is registered at the close of business on any record date (as hereinafter defined) with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date notwithstanding the cancellation of such Trust Certificate upon any registration of transfer or exchange subsequent to such record date and prior to such Interest Payment Date; provided, however, that if and to the extent that such interest shall not be paid or duly provided for on

such Interest Payment Date, such defaulted interest shall be paid to the persons in whose names outstanding Trust Certificates are registered at the close of business on a subsequent record date established by notice given by mail or on behalf of the Trustee to the holders of Trust Certificates not less than 15 days before such subsequent record date, which record date shall not be less than five days before the date of payment of such defaulted interest. The term "record date" as used in this Section 2.02 with respect to any Interest Payment Date (except a date for payment of defaulted interest) shall mean the September 15 or March 15 (whether or not a business date), as the case may be, next preceding such Interest Payment Date.

The principal and interest on the Trust Certificates shall be payable at the Corporate Trust Office in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts.

Section 2.03. Form of Trust Certificates. The Trust Certificates shall be in substantially the form hereinbefore set forth.

Section 2.04. Execution by Trustee. The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or the facsimile signature of one of its Trust Officers and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of one of its authorized officers. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates may be adopted by the Trustee and be issued and delivered as though such person had not ceased to be or had been such officer of the Trustee.

Section 2.05. Characteristics of Trust Certificates.
(a) The Trust Certificates shall be registered, as to both principal and interest in the name of the holder and shall be transferable upon presentation and surrender thereof for transfer at the Corporate Trust Office accompanied by appropriate instruments of assignment of transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by a duly authorized attorney, in form satisfactory to the Trustee.

(b) The several denominations of Trust Certificates shall be interchangeable in authorized denominations at the Corporate Trust Office.

(c) Anything contained herein to the contrary notwithstanding, the parties may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any knowledge or notice to the contrary.

(d) The Trustee shall cause to be kept at the Corporate Trust Office books for the transfer and registration of the Trust Certificates.

(e) For any transfer or exchange the Trustee shall require the payment of a sum sufficient to reimburse it for any governmental charge connected therewith.

(f) Each Trust Certificate delivered, pursuant to any provision of this Agreement, in exchange for or substitution for, or upon the transfer, of the whole or any part, as the case may be, of one or more Trust Certificates, shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, such Trust Certificate shall be so dated that neither gain nor loss in interest shall result from such exchange, substitution or transfer.

(g) The Trustee shall not be required (1) to issue, transfer or exchange any Trust Certificate during a period beginning at the opening of business fifteen (15) days before the selection of Trust Certificates to be redeemed and ending at the close of business on the day of the mailing of the relevant notice of redemption pursuant to Section 3.02 or (2) to transfer or exchange any Trust Certificates called or being called for redemption in whole or in part except as provided in Section 3.02.

Section 2.06. Replacement of Lost Trust Certificates.
In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of or in substitution for the same if lost, destroyed or stolen. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish such security or indemnity as may be required by the Trustee in its discretion, and shall pay all expenses and charges of such substitution

or exchange. All Trust Certificates are held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

Section 2.07. Restrictions on Transfer of Trust Certificates. Each purchaser of Trust Certificates from the Trustee shall represent at the time of purchase that such Trust Certificates are not being acquired with any view to the distribution thereof within the meaning of the Federal Securities Act of 1933, as amended (the "1933 Act"), or the General Rules and Regulations (the "Rules") promulgated thereunder except pursuant to an offering of such Trust Certificates registered under the 1933 Act or as otherwise permitted by the 1933 Act and the Rules. Neither such Purchaser nor any subsequent transferee of any Trust Certificates shall sell or otherwise dispose of any such Trust Certificates except in accordance with the 1933 Act, the Rules and this Agreement, and the Trustee shall not be obligated to effect a transfer of any such Trust Certificates without having received an opinion of counsel satisfactory to it that the proposed disposition may be effected without violation of the 1933 Act, the Rules and this Agreement. The Trust Certificates shall bear a legend referring to the foregoing restrictions on disposition substantially as follows:

"The trust interest represented by this Trust Certificate has not been registered under the Securities Act of 1933 and may not be offered or sold, and no transfer thereof will be made by the Trustee, unless there is presented to the Trustee an opinion of counsel satisfactory to the Trustee that the proposed disposition is not in violation of the Securities Act of 1933, the General Rules and Regulations thereunder or the Equipment Trust Agreement under which this Trust Certificate is issued."

ARTICLE THREE

REDEMPTION OF TRUST CERTIFICATES

Section 3.01. Right of Redemption and Redemption Price. The Trust Certificates are subject to redemption in whole or in part through the application of the rental payable to the Trustee pursuant to Section 5.04(B)(4), on October 1, 1972, and on each October 1 thereafter to and including October 1, 1981, at the redemption price of 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption.

Section 3.02. Selection of Trust Certificates for Sinking Fund Redemption; Notice of Redemption. On or before September 2, 1972, and on or before September 2, in each year thereafter to and including September 2, 1981, the Trustee shall select for redemption, in such manner as in its discretion it shall deem appropriate and fair, a principal amount of Trust Certificates so as to exhaust the amount of rental to be paid by the Company to it in cash pursuant to Section 5.04(B)(4) on the next succeeding October 1, provided that Trust Certificates may be redeemed in part only in multiples of \$1,000.

The Trustee shall mail a notice of redemption at least 30 days prior to each sinking fund redemption date to the holders of the Trust Certificates so to be redeemed in whole or in part, at their last addresses as they shall appear upon the registry books, but failure to give or receive such notice, or any defect therein, shall not affect the validity of any proceedings for the redemption of Trust Certificates.

The notice of redemption shall specify the date for redemption and shall state that payment of the principal amount of Trust Certificates or portions thereof to be redeemed (together with all accrued and unpaid interest thereon) will be made at the Corporate Trust Office upon presentation and surrender of such Trust Certificates, that accrued interest to the date fixed for redemption will be paid as specified in said notice, and that from and after said date, interest thereon or on the portions thereof to be redeemed will cease to accrue. The notice of redemption shall also state the aggregate principal amount of Trust Certificates to be redeemed and the serial numbers thereof; and in case there shall have been selected as aforesaid less than the entire principal amount of any Trust Certificate, the notice shall specify the serial number of such Trust Certificate and the principal amount thereof called for redemption, and shall state that on and after the redemption date, upon surrender of such Trust Certificate, the holder will receive the redemption price in respect of the principal amount thereof called for redemption and without charge, a new Trust Certificate for the principal amount thereof remaining unredeemed. The serial numbers of any Trust Certificates to be redeemed, required to be included in any such notice, may be stated in any one or more of the following ways: individually; in groups from one number to another number, both inclusive, except such as shall previously have been called for redemption or otherwise retired; or in such other manner as the Trustee shall deem appropriate.

Section 3.03. Payment of Trust Certificates Called for Redemption. The Company on or before the redemption date specified in the notice of redemption having deposited with the Trustee an amount in cash sufficient to redeem all the Trust Certificates or portions thereof called for redemption, the Trust Certificates or portions thereof called for redemption

shall become due and payable on such redemption date at the Corporate Trust Office, and from and after such redemption date, interest on such Trust Certificates or portions thereof shall cease to accrue and such Trust Certificates or portions thereof shall no longer be deemed to be outstanding hereunder and shall cease to be entitled to the benefit of this Agreement except to receive payment from the monies reserved therefor in the hands of the Trustee. The Trustee shall hold the redemption monies in trust for the holders of the Trust Certificates or portions thereof called for redemption and shall pay the same to such holders respectively upon presentation and surrender of such Trust Certificates.

All Trust Certificates redeemed and paid under this Article Three shall be cancelled by the Trustee and no Trust Certificates shall be issued hereunder in place thereof. At the written request of the Company, the Trustee shall deliver to the Company cancelled Trust Certificates or shall destroy cancelled Trust Certificates held by it and deliver a certificate of destruction to the Company.

ARTICLE FOUR

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE

Section 4.01. Acquisition of Equipment by Trustee. The Company shall, from time to time, cause to be sold, assigned and transferred to the Trustee, as Trustee for the holders of the Trust Certificates, the Equipment described in Exhibit A hereto. It is understood that the Company will purchase all or a substantial part of such Equipment from Marathon Manufacturing Company or divisions or affiliates thereof. Such Equipment shall be delivered to the person or persons designated by the Trustee as its agent or agents to receive such delivery (who may be one or more of the officers or agents of the Company) and the certificate of any such agent or agents as to such delivery shall be conclusive evidence of such delivery.

In the event that the Company shall deem it necessary or desirable to procure for the use of the Company, and to include in the trust hereby created, other Equipment in lieu of or in addition to any of the Equipment specifically described in Exhibit A hereto prior to the delivery of such Equipment to the Trustee or its agent or agents, the Company may cause to be sold, assigned and transferred to the Trustee such other Equipment, to be included under the Trust.

Section 4.02 Payment of Deposited Cash. From time to time, when and as any of the Trust Equipment shall have been delivered to the Trustee or its agent or agents pursuant to Section 4.01, the Trustee shall pay, upon Request, to the manufacturers or owners (or to the Company if it shall be the owner) of the delivered Trust Equipment out of Deposited

Cash an amount which will equal 79.76% of the aggregate Cost of such Trust Equipment, as specified in the Officer's Certificate furnished to the Trustee pursuant to Section 4.03(b).

Section 4.03. Supporting Papers. The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it has received:

(a) A Certificate of the agent or agents designated by the Trustee to receive delivery of the Trust Equipment, stating that the Trust Equipment described and specified therein by number or numbers has been delivered to such agent or agents;

(b) An Officer's Certificate from the Company which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is in an amount therein specified or is not less than the amount therein specified, (iii) the date each unit of such Trust Equipment was first put into use or that such unit was first put into use not earlier than a specified date, (iv) whether such Trust Equipment has, within six months prior to the date of its acquisition by the Company been used or operated, by a person or persons other than the Company, in any business similar to that in which it has been or is to be used or operated by the Company, (v) whether such Trust Equipment is then subject to a lease and, if so, the name of each lessee, and (vi) that in the opinion of the signers, all conditions provided for in this Agreement relating to the payment in question, have been complied with;

(c) An Engineer's Certificate from the Company which shall state the fair value to the Company, in the opinion of the signer, of such Trust Equipment as of the date of the above-mentioned Request;

(d) A bill or bills of sale of such Trust Equipment from the Company as owner thereof to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is in the Company and is free from all liens and encumbrances (including any leasehold interest therein) other than subleases permitted by such in Section 5.09 and other than the rights of the Company; and

(e) An opinion of counsel to the effect (i) that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred in or accompanying such opinion, to vest in the Trustee, the rights and interests to such Trust Equipment contemplated by this Agreement free from

all liens and encumbrances (including any leasehold interest therein) other than subleases permitted by Section 5.09 and other than the rights and interests of the Company hereunder, (ii) that in the case of any Trust Equipment not specifically described herein, a proper supplement herein in respect of such Trust Equipment has been duly executed by the Trustee and the Company and (iii) that, in the opinion of such counsel, all conditions precedent provided for in this Agreement, relating to the payment in question, have been complied with.

Any Officer's Certificate delivered pursuant to this Section 4.03 may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to be evidenced in a final Officer's Certificate to be delivered to the Trustee.

The Company will cause to be sold, assigned and transferred to the Trustee Equipment in such amount and of such Cost that the aggregate final Cost of the Trust Equipment will not be less than 100% of the aggregate principal of said Trust Certificates.

Section 4.04. Non-exclusive Nature of Obligations Hereunder. Anything in this Agreement contained to the contrary notwithstanding, it is expressly understood that the Company and any affiliate thereof may enter into and perform at any time and from time to time other equipment financing agreements of any type, including other equipment trust agreements or conditional sales agreements with persons who may or may not be parties to this Agreement.

ARTICLE FIVE

LEASE OF TRUST EQUIPMENT TO THE COMPANY

Section 5.01. Lease of Trust Equipment. The Trustee does hereby let and lease to the Company, for the term of ten (10) years from and after October 1, 1971, all of the Trust Equipment.

Section 5.02. Equipment Automatically Subjected. As and when any Equipment shall from time to time be delivered hereunder to the Trustee or its agent or agents the same shall, ipso facto, and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

Section 5.03. Substituted Equipment Subject Hereto. In the event that the Company shall, as provided in Section 4.01, 4.03 or 5.06, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto and shall be subject to all the terms and conditions hereof in all respects as

though it had been part of the Trust Equipment herein specifically described.

Section 5.04. Rental Payments.

(A) The Company hereby accepts the lease of all the Trust Equipment and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at the Corporate Trust Office (or in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America, as at the time of payment shall be legal tender for the payment of public and private debts, rent hereunder which shall be sufficient to pay and discharge the items described in the following paragraph, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment);

(B) The Company shall pay to the Trustee, as hereinafter provided as rental for the Trust Equipment (notwithstanding that any of the Trust Certificates shall have been acquired by the Company or shall not have been presented for payment), the following:

(1) from time to time upon demand of the Trustee
(a) the necessary and reasonable expenses of the trust created hereby, including compensation and expenses provided for herein, and (b) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at the time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investment Securities;

(2) from time to time upon demand of the Trustee any and all taxes, assessments and governmental charges upon or on account of the income or property of the Trust, or upon or on account of this Agreement, which the Trustee as such may be required to pay,

(3) (a) the amounts of the interest payable on the Trust Certificates when and as the same shall become payable, and (b) interest at the rate of 10% per annum from the due date, upon the amount of any installments of rental payable under this subparagraph (3) and the following subparagraphs (4) and (5) which shall not be paid when due, to the extent legally enforceable;

(4) as a compulsory Sinking Fund for the Trust Certificates, (i) on or before October 1, 1972, an amount in Cash sufficient to redeem (a) \$95,000 aggregate principal amount of Trust Certificates or (b) a sum equal to the outstanding principal amount of the Trust Certificates divided by the number of dates upon which such rental is due (including the date upon

which payment is then due and the date of maturity), whichever is less, and (ii) rental on each October 1 thereafter to and including October 1, 1981 in an amount calculated in the same manner as provided in clause (i) immediately above. On or before October 1 in each year commencing October 1, 1972, the Company may pay additional rental to the Trustee as a voluntary sinking fund to redeem all or any part of the principal amount of Trust Certificates, without payment of penalty or premium, as the Company shall specify in a Request delivered on or before the July 1 next preceding the October 1 on which such rental is to be paid;

(5) the principal of the Trust Certificates (other than those called for redemption pursuant to Section 3.01) upon the maturity thereof, whether by declaration or otherwise. Notwithstanding the provisions of subparagraph (4) above, the Company may, at its option, in lieu of making all or any part of any rental payment provided for in said subparagraph (4) above in cash, credit, pursuant to a Request delivered to the Trustee on or before the July 1 next preceding the October 1 on which such rental payment is due, against such rental payment any Trust Certificate specified in such Request (not theretofore credited) acquired otherwise than as provided in Section 3.01. The Company shall, prior to such October 1, deliver to the Trustee for cancellation (if not theretofore delivered to the Trustee) all such Trust Certificates. The amount of the rental payment in anticipation of which the Company specifies in such Request that any Trust Certificate is to be credited shall be reduced by an amount equal to the redemption price referred to in Section 3.01 hereof of such Trust Certificate on the October 1 in respect of which such credit is taken.

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of the United States of America, or of any state, county, municipality or other taxing authorities thereof, to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate.

The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, provided that the rights or interests of the Trustee or the holders of the Trust Certificates will not be materially endangered thereby and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

Section 5.05. Termination of Lease. At the termination of the lease provided herein and after all payments due or

to become due from the Company hereunder shall have been completed and fully made to the Trustee (1) any monies remaining in the hands of the Trustee after providing for payment in full of all the outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid back to the Company; (2) title to all the Trust Equipment shall vest in the Company; and (3) the Trustee shall execute for a record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; provided, however, that until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

Section 5.06. Substitution and Replacement of Equipment.
Upon Request from the Company, the Trustee shall at any time and from time to time, execute and deliver a bill of sale assigning and transferring to the transferee named in such Request all the rights, title and interest of the Trustee in and to any or all of the Trust Equipment; provided, however, that none of the Trust Equipment shall be so assigned or transferred (except as provided in Section 5.05) unless simultaneously (a) there shall be conveyed to the Trustee other Equipment of a fair value to the Company no less than the fair value, as of the date of such Request, of the Trust Equipment so assigned or transferred by the Trustee or (b) there shall be paid to the Trustee cash in an amount not less than the fair value, as of said date, of the Trust Equipment so assigned or transferred by the Trustee.

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, the Company shall, if other Equipment is to be conveyed to the Trustee in substitution for the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee the following papers:

(1) An Engineer's Certificate stating (i) the fair value, as of the date of said Request, of the Trust Equipment so to be assigned or transferred by the Trustee, (ii) that such assignment or transfer will not impair the security under this Agreement in contravention of the provisions hereof and (iii) the fair value to the Company of such substituted units of Equipment as of such date;

(2) An Officer's Certificate stating (i) the date each unit of Trust Equipment so to be assigned or transferred by the Trustee was first put into use (or that such unit was first put into use not later than a specified date), (ii) the original cost of each unit of the Equipment so to be substituted and the day it was first put

into use (or that such unit was first put into use not earlier than a specified date), (iii) that each such unit so to be substituted is Equipment as herein defined, (iv) that no event of default has occurred and is continuing and (v) that in the opinion of the signers, all conditions precedent provided for in this Agreement relating to such substitution, have been complied with;

(3) A certificate and a bill or bills of sale in respect of such substituted Equipment as provided for in subparagraphs (a) and (d) of the first paragraph of Section 4.03; and

(4) An Opinion of Counsel to the effect (i) that such bill or bills of sale are valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Trustee the rights and interests to such substituted Equipment contemplated by this Agreement free from all liens and encumbrances (including any leasehold interest therein) other than subleases permitted by Section 5.09 hereof, and other than the rights and interests of the Company hereunder, (ii) that a proper supplement hereto in respect of such substituted Equipment has been duly executed by the Trustee and the Company and (iii) that, in the opinion of such counsel, all conditions precedent provided for in this Agreement with respect to such substitution, have been complied with.

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, the Company shall, if cash is to be paid to the Trustee in respect to the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee papers corresponding to those set forth in the second paragraph of this Section 5.06 insofar as they relate to the action requested.

Cash deposited with the Trustee pursuant to this Section 5.06 or pursuant to Section 5.08 shall, from time to time, be paid over by the Trustee to the Company upon Request, against conveyance to the Trustee of Equipment having a fair value as of the date of said Request, not less than the amount of cash so paid and upon compliance by the Company with all of the provisions of the second paragraph of this Section 5.06 (including an Engineer's Certificate corresponding to that required by subparagraph (1) of such second paragraph with respect to said Equipment) insofar as they relate to the action requested.

For all purposes of this Section 5.06, fair value shall be determined as follows (and the manner of such determination shall be set forth in each Engineer's Certificate furnished in respect thereof):

1. The fair value of any unit of Trust Equipment assigned or transferred by the Trustee

as provided in Section 5.06 shall be deemed to be the actual fair value thereof as certified to the Trustee on the date of which fair value is to be determined.

2. The fair value of any unit of Equipment conveyed to the Trustee as provided in this Section 5.06 shall be deemed to be the actual fair value thereof as certified to the Trustee on the date of which fair value is to be determined.

Section 5.07. Marking of Trust Equipment. The Company agrees that if the Opinion of Counsel specified in Section 5.08 hereof shall not be delivered to the Trustee as provided in Section 5.08 or if, in the opinion of the Company, marking of one or more units of Trust Equipment is required by law to properly protect the title of the Trustee to the Trust Equipment or rights of the holders of the Trust Certificates, the Company, will as soon as practicable after determining that such marking is required or after the failure of the Company to deliver the aforementioned Opinion of Counsel, arrange for the marking of each unit of the Trust Equipment in the following manner. There shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of each such unit a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than 7/16th of one inch in height:

TITLE TO THIS CAR IS VESTED IN THE TRUSTEE UNDER
AN EQUIPMENT TRUST AGREEMENT RECORDED UNDER
SECTION 20C OF THE INTERSTATE COMMERCE ACT.

Such plates or marks shall be such as to be readily visible and as to indicate plainly a Trustee's ownership of each such unit of the Trust Equipment.

In case, prior to the termination of the lease provided for herein, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall forthwith cause the same to be restored or replaced.

The Company shall not change or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company which shall be filed and recorded in like manner as this Agreement.

Any unit of Trust Equipment required to be marked pursuant to this Section 5.07 may be lettered, with the names

or initials or other insignia customarily used by the Company on railroad equipment owned by it of the same or a similar type or any other appropriate manner, for convenience of identification of the rights of the Company to use the units of Trust Equipment permitted under this Agreement, and may also be lettered in the case of a sublease of any Trust Equipment made pursuant to Section 5.09 hereof, in such manner as may be appropriate for convenience of identification of the subleased interest therein; but, except as provided in the preceding paragraph, the Company, from and after the date hereof and during the continuance provided for herein, will not allow the name of any person, firm, association or corporation to be placed on or to remain on any unit of Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or any person, firm, association, or corporation other than the Trustee.

Section 5.08. Maintenance of Trust Equipment. The Company agrees that it will maintain and keep or cause others to maintain and keep the Trust Equipment in good repair and proper repair without cost or expense to the Trustee, unless and until it becomes worn out, unsuitable for use, lost or destroyed. Whenever any of the Trust Equipment shall become worn out, unsuitable for use, lost or destroyed, the Company shall forthwith deliver to the Trustee an Engineer's Certificate describing such Trust Equipment and stating the fair value thereof as of the date such Trust Equipment became worn out, unsuitable for use, lost or destroyed, and shall deposit with the Trustee an amount in cash equal to such fair value. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such wearing out, unsuitableness for use, loss or destruction. Cash deposited with the Trustee pursuant to this Section 5.08 shall be held and applied as provided for in the fourth paragraph of Section 5.06. For all purposes of this paragraph, fair value shall be determined in the manner provided in subparagraph (1) of the penultimate paragraph of Section 5.06.

The Company covenants and agrees to furnish to the Trustee whenever required by the Trustee, at least once on or before May 15 in every calendar year following the calendar year in which occurs the first delivery of any of the Trust Equipment to the Trustee or its agent or agents hereunder and during the continuance of the lease provided for herein (a) an Officer's Certificate, dated as of the preceding February 14 stating (1) the number of units of the Trust Equipment then covered hereby and under sublease, together with a list of such sublessees and the units of Trust Equipment leased by each of them, (2) the amount, description and numbers of all Trust Equipment that may have become worn out or that may have become unsuitable for use or lost or destroyed by accident or otherwise since the date of the last preceding statement (or the date of

this Agreement in case of the first statement), (3) the number of units of the Trust Equipment which the Company has been notified are then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs and (4) that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), the plates or marks required by Section 5.07, if any, have been preserved, or that such Trust Equipment when repainted or repaired has been again plated or marked as required thereby and (b) an Opinion of Counsel to the effect that the marking of one or more units of Trust Equipment as provided in Section 5.07 hereof is not required by law to properly protect the title of the Trustee to the Trust Equipment or the rights of the holders of Trust Certificates. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof.

Section 5.09. Possession of Trust Equipment. Except as provided in this Section 5.09, the Company will not assign or transfer its rights hereunder, or transfer or sublet the Trust Equipment or any part thereof or assign, pledge, mortgage, transfer or otherwise dispose of any rights under any sublease of any of the Trust Equipment, without the written consent of the Trustee first had and obtained; and the Company shall not, without such written consent, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or a transfer to a corporation which shall acquire all or substantially all of the property of the Company and which, by execution of an appropriate instrument, satisfactory to the Trustee, shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder shall not be deemed to be a breach of this covenant. The appointment of a receiver or receivers in equity or reorganization or a trustee or trustees in bankruptcy or reorganization (a) for the Company shall not be deemed an unauthorized assignment if, prior to any action by the Trustee to exercise the remedies herein provided, such receiver or receivers or trustee or trustees shall be discharged or such receiver or receivers or trustee or trustees shall pursuant to court order or decree, in writing duly assume and agree to pay or perform each and all of the obligations and covenants hereunder of the Company in such manner that such obligations shall have the same status as obligations incurred by such receiver or receivers or trustee or trustees.

So long as the Company shall not be in default under this Agreement, the Company and any of its Affiliates shall be entitled to the possession and use of the Trust Equipment in accordance with the terms hereof, and the Company may also (a) furnish the Trust Equipment or any part

thereof to railroad companies for use upon the lines of railroads owned or operated by them or over which they have trackage rights and upon connection and other lines of railroads in the usual interchange of traffic, or to persons other than railroad companies for use in their business, or (b) sublet all or any part of the Trust Equipment. For the purposes of this Section 5.09 and of Section 5.10, the lease of Trust Equipment to The Dow Chemical Company described in Exhibit 3 is deemed to be a sublease.

Any such sublease may provide that the sublessee so long as it shall not be in default under such sublease, shall be entitled to the possession and use of the Trust Equipment covered thereby, and, subject to the provisions of Section 5.07, may provide for lettering and marking upon such Equipment for convenience of identification of the leasehold interest of such sublessee therein; provided, however, that anything in the foregoing provisions of this sentence to the contrary notwithstanding, any such sublease shall not negate all or any part of the rights of the Company thereunder to assign, pledge, mortgage, transfer or otherwise dispose of any Trust Equipment.

The Trustee shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of the Company's rights hereunder or in case of any unauthorized transfer or sublease of any of the Trust Equipment. The election of the Trustee to terminate the lease provided for herein shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

Section 5.10. Assignment of Lease Rentals and Other Payments. Subject to the rights of the sublessee, the Company hereby assigns, transfers and sets over unto the Trustee, as security for the payment and performance of all of the Company's obligations under the lease provided for herein (1) all the Company's right, title and interest as lessor in, to and under any sublease permitted by Section 5.09 of any units of Trust Equipment covered thereby, together with all rights, powers, privileges, options and other benefits of the Company as lessor under such sublease in respect of such units of Trust Equipment, including, but not limited to, the Company's right to receive and collect all rentals and other payments now or hereafter to become payable to or receivable by the Company under or pursuant to the provisions of such sublease and, in addition, (2) all the Company's right to receive and collect all per diem, mileage or other payments now or hereafter to become payable to the Company in respect of the Trust Equipment, whether under or pursuant to the provisions of any such sublease or otherwise; provided, however, that until the happening of an Event of Default, the Trustee shall not collect or receive any of such rentals or other payments or take any other action in respect

thereof. The Company represents and warrants that it has not heretofore made, and agrees that it will not hereafter make, in respect of the Trust Equipment, any other assignment of such sublease or the rentals or the other payments payable to or receivable by the Company under any such sublease or otherwise.

It is expressly agreed that the rights hereby assigned to the Trustee are subject to the rights of sublessees under valid and subsisting subleases described in and permitted by Section 5.09 hereof, and that the Trustee, so long as such sublessees are not in default under said subleases, shall not interfere with the rights of peaceful and undisturbed possession of such sublessees in and to any of the Trust Equipment in accordance with the terms of such subleases.

In addition to, and without in any way limiting, the powers conferred upon the Trustee by Sections 6.01 and 6.02, the Trustee may, upon the happening of an Event of Default and not otherwise, in the Trustee's own name, or in the name of the Trustee's nominee, or in the name of the Company or as the Company's attorney, (i) ask, demand, sue for, collect and receive any and all rentals or per diem, mileage, or other payments to which the Company is or may become entitled in respect of the Trust Equipment and (ii) with respect to any sublease permitted by Section 5.09 to which any units of Trust Equipment may then be subject, enforce compliance by the lessee under such sublease with all the terms and provisions thereof and make all waivers and agreements, give all notices, consents and releases, take all action upon the happening of an event of default specified in such sublease, and do any and all other things whatsoever which the Company, as lessor, is or may become entitled to do under such sublease.

The assignment made by this Section 5.10 is made only as security and, therefore, shall not subject the Trustee to, or transfer, or pass or in any way affect or modify the liability of the Company under any sublease or otherwise, it being understood that notwithstanding any assignment, any obligations of the Company under any sublease or otherwise shall be and remain enforceable against and only against, the Company.

Upon the full discharge and satisfaction of the Company's obligations under the lease provided for herein, the assignment made by this Section 5.10 shall terminate and all rights, title and interest of the Trustee as assignee hereunder in and to any sublease or any payments in respect of the Trust Equipment shall revert to the Company.

The Company covenants and agrees with the Trustee that in any suit, proceeding or action brought by the Trustee pursuant to the provisions of this Section 5.10 for any rentals

or per diem, mileage or other payments in respect of the Trust Equipment, whether under or pursuant to the provisions of any sublease or otherwise, or to enforce any provisions of any sublease, the Company will save, indemnify and keep the Trustee harmless from and against all expense, loss or damage suffered by reason of any defense, set off, counterclaim or recoupment whatsoever.

Section 5.11. Patent Indemnity. The Company covenants and agrees to indemnify the Trustee against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented invention in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the states and other jurisdictions in which the Trust Equipment or any thereof, may be operated, and with all lawful acts, rules, regulations and orders of any commissions, boards or other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances, provided, however, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

ARTICLE SIX

REMEDIES IN EVENT OF DEFAULT

Section 6.01. Events of Default. The Company covenants and agrees that in case

(a) The Company shall default in the payment of any part of the rental payable hereunder for more than thirty (30) days after the same shall have become due and payable, or

(b) The Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or sublease of the Trust Equipment, or, except as herein authorized, shall part with the possession of any of the Trust Equipment and shall fail or refuse to cause such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust

Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the fair value of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than herein authorized, as certified to the Trustee pursuant to Section 4.03 or 5.06 (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

(c) The Company shall, for more than 60 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance, or

(d) An event of default shall occur under any lease, agreement, equipment, trust agreement or indenture under which the Company is an obligor and the Trustee is also acting as Trustee thereunder (the term "event of default" being used in this subparagraph (d) to mean any event which, after any applicable notice and/or period of grace provided for in the instrument in question, permits the Trustee thereunder to declare the principal amount of the obligation issued or secured thereby to become immediately due and payable, then, in any such case (herein sometimes called an Event of Default), the Trustee, by notice in writing to the Company, or the holders of not less than 25% in principal amount of the then outstanding Trust Certificates, by notice in writing to the Company and to the Trustee, may declare to be due and payable forthwith the entire amount of the rentals (not including rentals required for the payment of interest accruing after the date of such declaration or rentals payable pursuant to Section 5.04(B)(4) after the date of such declaration) payable by the Company as set forth in Section 5.04 and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the rate of 10% per annum, to the extent legally enforceable, on any portion thereof overdue.

In addition, in case one or more Events of Default shall happen, the Trustee, by notice in writing to the Company, or the holders of not less than 25% in principal amount of the then outstanding Trust Certificates, by notice in writing to the Company and the Trustee, may declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

In case the Company shall fail to pay any installment of rental payable pursuant to Section 5.04(B)(3), (B)(4) or (B)(5) when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of 30 days, the Trustee, in its own name and as Trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the monies adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor upon the Trust Certificates under the Bankruptcy Act or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company or such other obligor, or in case of any other judicial proceedings relative to the Company or such other obligor, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 6.01, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (but not including rentals required for the payment of interest accruing after the date of such declaration or rentals payable pursuant to Section 5.04 (B)(4) after the date of such claim or claims) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities

incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

Section 6.02 Remedies. Subject to the rights of sublessees under subleases permitted by Section 5.09 hereof, in case of the happening of any Event of Default, the Trustee (a) may by its agents enter upon the premises of the Company and of any Affiliate of the Company or of any sublessee where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, (b) shall be entitled to collect, receive and retain all per diem, mileage, sublease rentals or other charges of any kind then due on account of or thereafter earned by the Trust Equipment or any part thereof, and (c) may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 6.01 hereof) may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of interests hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed

thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of the items mentioned in Section 5.04 (other than interest not then accrued or rentals payable pursuant to Section 5.04(B)(4) due after the date of the declaration referred to in Section 6.01), whether or not they shall have then matured.

It is expressly agreed that the rights of the Trustee under this Section 6.02 are subject to the rights of sublessees under valid and subsisting subleases described in and permitted by Section 5.09 hereof, and that the Trustee, so long as such sublessees are not in default under said subleases, shall not interfere with the rights of peaceful and undisturbed possession of such sublessees in and to any of the Trust Equipment in accordance with the terms of such subleases.

Section 6.03 Application of Proceeds. If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 6.01 and 6.02, all payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates), shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (b) of the interest then due, with interest on overdue interest at the rate of 10% per annum to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the rate of 10% per annum to the extent legally enforceable from the last preceding Interest Payment Date, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then pro rata without preference between principal and interest.

After all such payments shall have been made in full the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company, free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

Section 6.04. Waivers of Default. Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 6.01, the holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past Event of Default and its consequences, except an Event of Default in the payment of any installment of rental payable pursuant to Section 5.04(B)(3), (B)(4), or (B)(5), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 6.01 provided, but before October 1, 1981, all arrears of rent (with interest at the rate of 10% per annum upon any overdue installments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the Trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates, and any other rental installments, which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 6.05. Obligations of Company Not Affected by Remedies. No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee

or by any such holder, shall affect the obligations of the Company hereunder. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interest on the Trust Certificates.

Section 6.06. Company to Deliver Trust Equipment to Trustee. In case the Trustee shall rightfully demand possession of any of the Trust Equipment other than Trust Equipment under valid subleases permitted by Section 5.09 in pursuance of this Agreement, the Company will, at its own expense, forthwith and in the usual manner and at usual speed, cause such Trust Equipment to be drawn to such point or points as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad or premises approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

Section 6.07. Trustee to Give Notice of Default, but May Withhold Under Certain Circumstances. The Trustee shall give to the holders of the Trust Certificates in the manner and to the extent provided in Section 8.04(c) with respect to reports pursuant to Section 8.04(a) notice of each default hereunder known to the Trustee within 90 days after the occurrence thereof, unless such default shall have been remedied or cured before the giving of such notice; provided, that, except in the case of default in the payment of any part of the rental payable hereunder pursuant to Section 5.04(B)(3), (B)(4) or (B)(5) hereof, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trustee committee of directors and/or Responsible Officers in good faith determine that the withholding of such notice is in the interests of the holders of the Trust Certificates. The term "default" as used in this Section 6.07 shall mean the happening of any event defined as an Event of Default in Section 6.01, except that, for the purposes of this Section 6.07 only, there shall be eliminated from the definition of any such event as specified in Section 6.01 any reference to the making of a written demand or the continuance, or the continuance in force, for any period of days of a default or failure on the part of the Company referred to in such definition.

Section 6.08. Limitations on Suits by Holders of Trust Certificates. No holder of any Trust Certificate shall have any right by virtue or by availing of any provision of this Agreement to institute any action or proceedings at law

or in equity or in bankruptcy or otherwise, upon or under or with respect to this Agreement, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as hereinbefore provided, and unless the holders of a majority in aggregate principal amount of the Trust Certificates then outstanding shall have made written request to the Trustee to institute such action or proceedings in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceedings and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.10; it being understood and intended, and being expressly covenanted by the holder of every Trust Certificate with every other holder and the Trustee, that no one or more holders of Trust Certificates shall have any right in any manner whatever, by virtue or by availing of any provision of this Agreement, to affect, disturb, or prejudice the rights of any other holder of Trust Certificates, or to obtain or seek to obtain priority over or preference to any other such holder or to enforce any right under this Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Trust Certificates. For the protection and enforcement of the provisions of this Section 6.08, each and every holder of a Trust Certificate and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Section 6.09. Unconditional Right of Holders of Trust Certificates to Sue for Principal and Interest. Notwithstanding any other provision in this Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of and interest on such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

Section 6.10 Control by Holders of Trust Certificates. The holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided,

however, that such direction shall not be otherwise than in accordance with law and the provisions of this Agreement, and the Trustee, subject to the provisions of Section 9.02, shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, shall determine that the proceeding so directed may not lawfully be taken, or if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed would involve it in a personal liability, or if the Trustee in good faith should determine that the action so directed would be unjustly prejudicial to the holders of the Trust Certificates not taking part in such direction; and provided further, that nothing in this Agreement contained shall impair the right of the Trustee in its discretion to take any action deemed proper by the Trustee and which is not inconsistent with such direction by the holders of the Trust Certificates.

Section 6.11. Right of Court to Require Filing of Undertaking to Pay Costs. All parties to this Agreement agree, and each holder of any Trust Certificate by his acceptance thereof shall be deemed to have agreed that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 6.11 shall not apply to any suit instituted by the Trustee, to any suit instituted by any holder of a Trust Certificate, or group of holders of the Trust Certificates holding in the aggregate more than 10% in principal amount of the Trust Certificates outstanding, or to any suit instituted by any holder of a Trust Certificate for the enforcement of the payment of the principal of or interest on any Trust Certificate on or after the due date expressed in such Trust Certificate.

Section 6.12. Remedies Cumulative. The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

ARTICLE SEVEN

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

Section 7.01. Discharge of Liens. The Company covenants and agrees that it will pay and discharge, or cause

to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold interest of the Company therein; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

Section 7.02. Payment of Expenses; Recording. The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment. The Company will, promptly after the execution and delivery of this Agreement and each supplement hereto, respectively, cause this Agreement and such supplement to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof.

Promptly after the execution and delivery of this Agreement and each supplement hereto, the Company will furnish to the Trustee an Opinion of Counsel stating that in the opinion of such counsel, this Agreement or such supplement, as the case may be, has been properly recorded and filed so as effectively to protect the title of the Trustee to the Trust Equipment and its rights and the rights of the holders of the Trust Certificates thereunder and hereunder (to the extent possible under applicable law) and reciting the details of such action or stating that in the opinion of such counsel no such action is necessary for any of such purposes; and the Company shall furnish to the Trustee, not more than three months after the anniversary in each year, commencing with the year 1972, of the first recording or filing of this Agreement, an Opinion of Counsel stating either that, in the opinion of such counsel (i) such action has been taken with respect to the recording, filing, rerecording and refiling of this Agreement and each supplement hereto as is necessary for the proper protection of the title of the Trustee to the Trust Equipment and the rights of the Trustee and holders

of the Trust Certificates hereunder and thereunder (to the extent possible under applicable law) and reciting the details of such action, or (ii) no such action is necessary for any of such purposes.

Section 7.03. Further Assurances. The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

ARTICLE EIGHT

LISTS OF HOLDERS OF THE TRUST CERTIFICATES AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 8.01. Company to Furnish Trustee Information as to Names and Addresses of Holders of the Trust Certificates. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee during the periods September 1 to September 15, inclusive, and March 1 to March 15, inclusive, in each year, beginning with March 1971, and at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list in such form as the Trustee may reasonably require containing all the information in the possession or control of the Company and its paying agents other than the Trustee as to the names and addresses of the holders of Trust Certificates obtained since the date as of which the next previous list, if any, was furnished; provided, however, that so long as the Trustee is the registrar of the Trust Certificates pursuant to Section 2.05, no such list need be furnished. Any such list may be dated as of a date not more than 15 days prior to the time such information is furnished or caused to be furnished and need not include information received after such date.

Section 8.02. Preservation of Information; Communications to Holders of the Trust Certificates. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Trust Certificates (1) contained in the most recent list furnished to it as provided in Section 8.01, (2) received by it in the capacity of paying agent or registrar (if so acting) hereunder and (3) filed with it within the two preceding years pursuant to the provisions of Section 8.03(c)(2).

The Trustee may (1) destroy any list furnished to it as provided in Section 8.01 upon receipt of a new list so furnished, (2) destroy any information received by it as paying agent or registrar (if so acting) hereunder upon delivering to itself as

Trustee, not earlier than 45 days after an Interest Payment Date on the Trust Certificates, a list containing the names and addresses of the holders of Trust Certificates obtained from such information since the delivery of the next previous list, if any, (3) destroy any list delivered to itself as Trustee which was compiled from information received by it as paying agent or registrar (if so acting) hereunder upon the receipt of a new list so delivered and (4) destroy any information filed with it pursuant to the provisions of Section 8.03(c)(2) but not until two years after such information had been filed with it.

(b) In case three or more holders of Trust Certificates (hereinafter referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Trust Certificate for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other holders of Trust Certificates with respect to their rights under this Agreement or under the Trust Certificates and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within five business days after the receipt of such application, at its election, either

(1) afford such applicants access to the information preserved at the time by the Trustee in accordance with the provisions of Section 8.02(a), or

(2) inform such applicants as to the approximate number of holders of Trust Certificates whose names and addresses appear in the information preserved at the time by the Trustee in accordance with the provisions of Section 8.02(a), and as to the approximate cost of mailing to such holders of the Trust Certificates the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each holder of a Trust Certificate whose name and address appears in the information preserved at the time by the Trustee in accordance with the provisions of Section 8.02(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment or provisions for the payment, of the reasonable expenses of mailing.

(c) Each and every holder of the Trust Certificates, by receiving and holding the same, agrees with the Company

and the Trustee that neither the Company nor the Trustee nor any paying agent shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the holders of the Trust Certificates in accordance with the provisions of Section 8.02(b), regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 8.02(b).

Section 8.03. Reports by the Trustee. (a) On or before August 1, 1972, and on or before August 1 in every year thereafter, so long as any Trust Certificates are outstanding hereunder, the Trustee shall transmit to the holders of the Trust Certificates, as hereinafter in this Section 8.03 provided, a brief report dated as of the preceding June 1 with respect to:

(1) its eligibility under Section 9.08 and its qualifications under Section 9.07, or in lieu thereof, if to the best of its knowledge it has continued to be eligible and qualified under said Sections, a written statement to such effect;

(2) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Trust Certificates, on the trust estate or on any property or funds held or collected by it as Trustee, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than 1/2 of 1% of the principal amount of the Trust Certificates outstanding on the date of such report;

(3) the amount, interest rate, and maturity date of all other indebtedness owing by the Company (or by any other obligor on the Trust Certificates) to the Trustee in its individual capacity, on the date of such report, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in Section 9.12(b)(2), (3), (4), or (6);

(4) The property and funds, if any, physically in the possession of the Trustee as such on the date of such report;

(5) Any release, assignment or transfer, or release, assignment or transfer and substitution

of any Trust Equipment (and the consideration therefor, if any) which it has not previously reported; provided, however, that to the extent that the aggregate value (as shown by the Engineer's Certificates furnished to the Trustee in respect thereof) of any or all of such released, assigned or transferred Trust Equipment does not exceed an amount equal to 1% of the principal amount of Trust Certificates then outstanding, the report need only indicate the number of such releases, assignments or transfers, the total value of Trust Equipment released, assigned or transferred as shown by said Engineer's Certificates, the aggregate amount of cash received and the aggregate value of Trust Equipment received in substitution therefor as shown by said Engineer's Certificates;

(6) Any additional issue of Trust Certificates which it has not previously reported; and

(7) Any action taken by the Trustee in the performance of its duties under this Agreement which it has not previously reported and which in its opinion materially affects the Trust Certificates or the trust estate, except action in respect of a default, notice of which has been or is to be withheld by it in accordance with the provisions of Section 6.07.

(b) The Trustee shall transmit to the holders of the Trust Certificates, as provided in Section 8.03(c), a brief report with respect to (i) the release, assignment or transfer, or release, assignment or transfer and substitution, of any Trust Equipment (and the consideration therefor, if any) unless the fair value of such Trust Equipment (as set forth in the Engineer's Certificate furnished to the Trustee in respect thereof) is less than 10% of the principal amount of Trust Certificates outstanding at the time of such release, assignment or transfer, or such release, assignment or transfer and substitution, such report to be so transmitted within 90 days after such time, and (ii) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last report transmitted pursuant to the provisions of Section 8.03(a) (or if no such report has yet been so transmitted, since the date of execution of this Agreement), for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Trust Certificates, on the trust estate or on property or funds held or collected by

it as Trustee, and which it has not previously reported pursuant to this Section 8.03(b), except that the Trustee shall not be required (but may elect) to report such advances if such advances remaining unpaid at any time aggregate 10% or less of the principal amount of Trust Certificates outstanding at such time, such report to be transmitted within 90 days after such time.

(c) Reports pursuant to this Section 8.03 shall be transmitted by mail:

(1) to all holders of Trust Certificates, as the names and addresses of such holders appear upon the registration books of the Trustee;

(2) to such holders of Trust Certificates as have, within the two years preceding such transmission, filed their names and addresses with the Trustee for that purpose; and

(3) except in the case of reports pursuant to Section 8.03(b), to each holder of a Trust Certificate whose name and address is preserved at the time by the Trustee, as provided in Section 8.02(a).

ARTICLE NINE

THE TRUSTEE

Section 9.01. Acceptance of Trusts. The Trustee hereby accepts the trust imposed upon it by this Agreement, and agrees to perform the same as herein expressed.

Section 9.02. Duties and Responsibilities of the Trustee; During Default; Prior to Default. In case an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall

not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Agreement.

None of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 9.03. Certain Rights of the Trustee. Except as otherwise provided in Section 9.02:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, trust certificate, guaranty or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete

authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel;

(c) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred thereon or thereby, and

(d) the Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

Section 9.04. Application of Rentals; Responsibility of Trustee to Insure or Record. The Trustee covenants and agrees to apply the rentals received by it under Section 5.04(B) when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in said Section 5.04(B).

Except as otherwise provided in Section 9.02, the Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders, of the Trust Certificates against all liability and expenses; and, except as aforesaid, the Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or statement of new numbers.

Section 9.05. Funds May be Held by Trustee; Investments in Investment Securities. Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and, if and to the extent permitted by applicable law or regulations of governmental authorities having jurisdiction over the Trustee, the Trustee may allow interest upon any such monies held by it in trust at the rate generally prevailing among Houston banks and trust companies or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash held by it or cash deposited with it pursuant to Section 5.06 or Section 5.08 (hereinafter in this Section 9.05 called Replacement Funds) in Investment Securities, at such prices

including any premium and accrued interest, as are set forth in such Request, such Investment Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment, sell such Investment Securities, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investment Securities, including accrued interest.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, rent received by it for that purpose under the provisions of Section 5.04(B)(1)(b).

The Company, if not to the knowledge of the Trustee in default under the terms hereof, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section 9.05, or any interest paid by any bank or bankers on deposits to the credit of the Trustee with such bank or bankers pursuant to Section 2.01, and any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit which may be realized from any sale or redemption of Investment Securities.

Section 9.06. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; May Perform Duties by Agents; Reimbursement of Expenses; Holding of Trust Certificates; Monies Held in Trust. Except as otherwise provided in Section 9.02, the Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers or owners thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

Except as otherwise provided in Section 9.02, the Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be answerable for only its own acts, negligence and willful defaults, and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof).

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual or fiduciary capacity may own, hold and dispose of Trust Certificates with the same rights which it would have if it were not Trustee.

Any monies at any time held by the Trustee or any paying agent hereunder shall, until paid out or invested by the Trustee or any paying agent as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

Section 9.07. Qualification of Trustee; Conflicting Interests. (a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section 9.07, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect specified in Section 9.09.

(b) In the event that the Trustee shall fail to comply with the provisions of Section 9.07(a) the Trustee shall, within ten days after the expiration of such 90 day period, transmit notice of such failure to the holders of the Trust Certificates in the manner and to the extent provided in Section 8.04(a).

(c) For the purposes of this Section 9.07 the Trustee shall be deemed to have a conflicting interest if

(1) the Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Trust Certificates issued under this Agreement, provided that there shall be excluded from the operation of this paragraph any indenture or indentures not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures;

(2) the Trustee or any of its directors or executive officers is an obligor upon the Trust Certificates or an underwriter for the Company;

(3) the Trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with the Company or an underwriter for the Company;

(4) the Trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee, or representative of the Company, or of an underwriter (other than the Trustee itself) for the Company who is currently engaged in the business of underwriting, except that (i) one individual may be director or an executive officer, or both

of the Trustee and a director or an executive officer, or both, of the Company, but may not be at the same time an executive officer of both the Trustee and the Company, (ii) if and so long as the number of directors of the Trustee in office is more than nine, one additional individual may be a director or an executive officer, or both, of the Trustee and a director of the Company and (iii) the Trustee may be designated by the Company or by any underwriter for the Company to act in the capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depositary, or in any other similar capacity, or, subject to the provisions of Section 9.07(c)(1), to act as trustee, whether under an indenture or otherwise;

(5) 10% or more of the voting securities of the Trustee is beneficially owned either by the Company, or by any director, partner, or executive officer thereof, or 20% or more of such voting securities is beneficially owned, collectively, by any two or more of such persons; or 10% or more of the voting securities of the Trustee is beneficially owned either by an underwriter for the Company or by any director, partner, or executive officer thereof, or is beneficially owned, collectively, by any two or more such persons;

(6) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default, (i) 5% or more of the voting securities of the Company or 10% or more of any other class of security of the Company, not including the Trust Certificates and securities issued under any other indenture under which the Trustee is also trustee or (ii) 10% or more of any class of security of an underwriter for the Company,

(7) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default, 5% or more of the voting securities of any person who, to the knowledge of the Trustee, owns 10% or more of the voting securities of the Company or controls directly or indirectly or is under direct or indirect common control with, the Company;

(8) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default, 10% or more of any class of security of any person who, to the knowledge of the Trustee, owns 50% or more of the voting securities of the Company; or

(9) the Trustee owns, on May 15th in any calendar year, in the capacity of executor, administrator, testamentary

or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity, an aggregate of 25% or more of the voting securities, or of any class of security, of any person, the beneficial ownership of a specified percentage of which would have constituted a conflicting interest under Section 9.07(c), (6), (7) or (8). As to any securities of which the Trustee acquired ownership through becoming executor, administrator, or testamentary trustee of an estate which included them, the provisions of the preceding sentence shall not apply, for a period of two years from the date of such acquisition, to the extent that such securities included in such estate do not exceed 25% of such voting securities or 25% of any such class of security. Promptly after May 15th in each calendar year, the Trustee shall make a check of its holdings of such securities in any of the above-mentioned capacities as of such May 15th. If the Company fails to make payment in full of the rentals payable hereunder in respect of the principal of or interest on any of the Trust Certificates when and as the same become due and payable, and such failure continues for 30 days thereafter, the Trustee shall make a prompt check of its holdings of such securities in any of the above-mentioned capacities as of the date of the expiration of such 30 day period, and after such date, notwithstanding the foregoing provisions of this paragraph, all such securities so held by the Trustee, with sole or joint control over such securities vested in it, shall, but only so long as such failure shall continue, be considered as though beneficially owned by the Trustee for the purposes of Section 9.07(c) (6), (7) and (8).

The specification of percentages in Section 9.07(c) (5) to (9), inclusive, shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of Section 9.07(c) (3) or (7).

For the purposes of Section 9.07(c)(6), (7), (8) and (9) only, (i) the terms "security" and "securities" shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay monies lent to a person by one or more banks, trust companies or banking firms, or any certificate of interest or participating in any such note or evidence of indebtedness; (ii) an obligation shall be deemed to be in default when a default in payment of principal shall have continued for 30 days or more and shall not have been cured; and (iii) the Trustee shall not be deemed to be the owner or holder of (x) any security which it holds as collateral security, as

trustee or otherwise, for an obligation which is not in default as defined in clause (ii) above, or (y) any security which it holds as collateral security under this Agreement, irrespective of any default hereunder, or (z) any security which it holds as agent for collection, or as custodian, escrow agent, or depositary, or in any similar representative capacity.

Except as provided above, the word "security" or "securities" as used in this Agreement shall mean any equipment trust certificate, note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(d) For the purposes of this Section 9.07:

(1) the term "underwriter" when used with reference to the Company shall mean every person who, within three years prior to the time as of which the determination is made, has purchased from the Company with a view to, or has offered or sold for the Company in connection with, the distribution of any security of the Company outstanding at such time, or has participated or has had a direct or indirect participation in any such undertaking, or has participated or has had a participation in the direct or indirect underwriting of any such undertaking, but such term shall not include a person whose interest was limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

(2) the term "director" shall mean any director of a corporation, or any individual performing similar functions with respect to any organization whether incorporated or unincorporated.

(3) the term "person" shall mean an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, or a government or political subdivision thereof. As used in this paragraph (3), the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(4) the term "voting security" shall mean any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a person, or any security issued under or pursuant to any trust, agreement or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a person.

(5) the term "Company" shall mean any obligor upon the Trust Certificates.

(6) the term "executive officer" shall mean the president, every vice president, every trust officer, the cashier, the secretary, and the treasurer of a corporation, and any individual customarily performing similar functions with respect to any organization whether incorporated or unincorporated, but shall not include the chairman of the board of directors.

The percentages of voting securities and other securities specified in this Section 9.07 shall be calculated in accordance with the following provisions:

- (A) A specified percentage of the voting securities of the Trustee, the Company or any other person referred to in this Section 9.07 (each of whom is referred to as a "person" in this paragraph) means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.
- (B) A specified percentage of a class of securities of a person means such percentage of the aggregate amount of securities of the class outstanding.
- (C) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to capital shares, and the number of units if relating to any other kind of security.
- (D) The term "outstanding" means issued and not held by or for the account of the issuer. The following securities shall not be deemed outstanding within the meaning of this definition:

(i) securities of an issuer held in a sinking fund relating to another class of securities of the issuer, if the obligation evidenced by such other class of securities is not in default as to principal or interest or otherwise;

(ii) securities of an issuer held in a sinking fund relating to securities of the issuer of the same class;

(iii) securities pledged by the issuer thereof as security for an obligation of the issuer not in default as to principal or interest or otherwise; and

(iv) securities held in escrow if placed in escrow by the issuer thereof;

provided, however, that any voting securities of an issuer shall be deemed outstanding if any person other than the issuer is entitled to exercise the voting rights thereof.

- (E) A security shall be deemed to be of the same class as another security if both securities confer upon the holder or holders thereof substantially the same rights and privileges; provided, however, that, in the case of secured evidences of indebtedness, all of which are issued under a single indenture, differences in the interest rates or maturity dates of various series thereof shall not be deemed sufficient to constitute such series different classes; and provided further that, in the case of unsecured evidences of indebtedness, differences in the interest rates or maturity dates thereof shall not be deemed sufficient to constitute them securities of different classes, whether or not they are issued under a single indenture.

Section 9.08. Persons Eligible for Appointment as Trustee. There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America or of the State of Texas or of the State of New York, having its principal office and place of business in the Cities of Houston, Dallas or Fort Worth in the State of Texas, or in the Borough of Manhattan, City and State of New York, having a combined capital and surplus of at least \$10,000,000, and which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal or state authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the

aforesaid supervising or examining authority, then for the purposes of this Section 9.08, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 9.08, the Trustee shall resign immediately in the manner and with the effect specified in Section 9.09.

Section 9.09. Resignation and Removal; Appointment of Successor Trustee. (a) The Trustee may at any time resign by giving written notice of resignation to the Company and by mailing notice of resignation to all holders of Trust Certificates at their last addresses appearing on the registry books. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors of the Company, one copy of which instrument shall be delivered to the Trustee so resigning and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any holder of a Trust Certificate who has been a bona fide holder of a Trust Certificate or Trust Certificates for at least six months may, subject to the provisions of Section 6.11, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

- (1) the Trustee shall fail to comply with the provisions of Section 9.07(a) after written request therefor by the Company or by any holder of a Trust Certificate who has been a bona fide holder of a Trust Certificate or Trust Certificates for at least six months, or
- (2) the Trustee shall cease to be eligible in accordance with the provisions of Section 9.08 and shall fail to resign after written request therefor by the Company or by any such holder of a Trust Certificate, or
- (3) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of its Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any holder of a Trust Certificate who has been a bona fide holder of a Trust Certificate or Trust Certificates for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding may at any time remove the Trustee and appoint a successor trustee by delivering to the Trustee to be removed, to the successor trustee so appointed and to the Company the evidence provided for in Section 10.01 of the action taken by the holders of the Trust Certificates.

(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to any of the provisions of this Section 9.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 9.10.

Section 9.10. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 9.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 9.06.

No successor trustee shall accept appointment as provided in this Section 9.10, unless at the time of such acceptance such successor trustee shall be qualified under the provisions

of Section 9.07 and eligible under the provisions of Section 9.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 9.10, the Company shall mail notice of the succession of such trustee hereunder to the holders of the Trust Certificates at their last addresses appearing upon the registry books. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 9.11. Merger or Consolidation of Trustee. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be qualified under the provisions of Section 9.07 and eligible under the provisions of Section 9.08, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 9.12. Preferential Collection of Claims Against the Company. (a) Subject to the provisions of Section 9.12(b), if the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of the Company within four months prior to a default, as defined in Section 9.12(c), or subsequent to such a default, then, unless and until such default shall be cured, the Trustee shall set apart and hold in a special account for the benefit of the Trustee individually, the holders of the Trust Certificates and the holders of other indenture securities (as defined in Section 9.12(c)):

(1) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such four months' period and valid as against the Company and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in Section 9.12(a)(2), or from the exercise of any right or set-off which the Trustee could have exercised if a petition in bankruptcy had been filed by or against the Company upon the date of such default; and

(2) all property received by the Trustee in respect of any claims as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such four months'

period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of the Company and its other creditors in such property or such proceeds.

Nothing herein contained, however, shall affect the right of the Trustee

(A) to retain for its own account (i) payments made on account of any such claim by any person (other than the Company) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the Trustee to a third person, and (iii) distributions made in cash, securities, or other property in respect of claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable state law;

(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such four months' period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such four months' period and such property was received as security therefor simultaneously with the creation thereof, and if the Trustee shall sustain the burden of proving that at the time such property was so received the Trustee had no reasonable cause to believe that a default as defined in Section 9.12(c) would occur within four months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C), against the release of any property held as security for such claim as provided in paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C) and (D), property substituted after the beginning of such four months' period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any pre-existing claim of the Trustee as such creditor, such claim shall have the same status as such pre-existing claim.

If the Trustee shall be required to account, the funds and property held in such special account and the proceeds

thereof shall be apportioned between the Trustee, the holders of the Trust Certificates and the holders of other indenture securities in such manner that the Trustee, the holders of the Trust Certificates and the holders of other indenture securities realize, as a result of payments from such special account and payments of dividends on claims filed against the Company in bankruptcy or receivership or in any proceedings for reorganization pursuant to the Bankruptcy Act or applicable state law, the same percentage of their respective claims, figured before crediting to the claim of the Trustee anything on account of the receipt by it from the Company of the funds and property in such special account and before crediting to the respective claims of the Trustee, the holders of the Trust Certificates and the holders of other indenture securities dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable state law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any distribution with respect to such claim, in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable state law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership, or proceedings for reorganization is pending shall have jurisdiction (i) to apportion between the Trustee, the holders of the Trust Certificates and the holders of other indenture securities, in accordance with the provisions of this paragraph, the funds and property held in such special account and the proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the Trustee, the holders of the Trust Certificates and the holders of other indenture securities with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any Trustee who has resigned or been removed after the beginning of such four months' period shall be subject to the provisions of this subsection (a) as though such resignation or removal had not occurred. If any Trustee has resigned or been removed prior to the beginning of such four months' period, it shall be subject to the provisions of this subsection (a) if and only if the following conditions exist:

(i) the receipt of property or reduction of claim, which would have given rise to the obligation to account, if such Trustee had continued as trustee, occurred after the beginning of such four months' period; and

(ii) such receipt of property or reduction of claim occurred within four months after such resignation or removal.

(b) There shall be excluded from the operation of Section 9.12(a) a creditor relationship arising from

(1) the ownership or acquisition of securities issued under an indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the Trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by this Agreement, for the purpose of preserving any property which shall at any time be subject to this Agreement or of discharging tax liens or other prior liens or encumbrances thereon, if notice of such advance and of the circumstances surrounding the making thereof is given to the holders of the Trust Certificates at the time and in the manner provided in this Agreement;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, conversion agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in Section 9.12(c);

(5) the ownership of stock or of other securities of a corporation organized under the provisions of Section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of the Company; or

(6) the acquisition, ownership, acceptance or negotiation of any drafts, bills of exchange, acceptances, or obligations which fall within the classification of self-liquidating paper as defined in Section 9.12(c).

(c) As used in this Section 9.12:

(1) The term "default" shall mean any failure to make payment in full of the principal of or interest on any of the Trust Certificates or upon the other indenture securities when and as such principal or interest becomes due and payable.

(2) The term "other indenture securities" shall mean securities upon which the Company is an obligor (as defined in the Trust Indenture Act of 1939) outstanding under any other indenture (i) under which the Trustee is also trustee, (ii) which contains provisions substantially similar to the provisions of this Section 9.12, and (iii) under which a default exists at the time of the apportionment of the funds and property held in such special account.

(3) The term "cash transaction" shall mean any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand.

(4) The term "self-liquidating paper" shall mean any draft, bill of exchange, acceptance or obligation which is made; drawn, negotiated or incurred by the Company for the purpose of financing the purchasing, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

(5) The term "Company" shall mean any obligor upon the Trust Certificates.

Section 9.13. Paying Agents. (a) Whenever the Trustee shall appoint a paying agent other than the Company, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 9.13,

(1) that it will hold all sums held by it as such agent for the payment of the principal of or interest on the Trust Certificates (whether such sums have been paid to it by the Company or by any other obligor on the Trust Certificates) in trust for the

benefit of the holders of the Trust Certificates and will notify the Trustee of the receipt of sums to be so held, and

(2) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Trust Certificates) to make any payment of the principal of or interest on the Trust Certificates when the same shall be due and payable.

(b) If the Company shall act as paying agent for the Trustee, it will, on or before each due date of the principal of or interest on the Trust Certificates, set aside, segregate and hold in trust for the benefit of the holders of the Trust Certificates a sum sufficient to pay such principal or interest so becoming due. The Company will promptly notify the Trustee of any failure to take such action.

ARTICLE TEN

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

Section 10.01. Evidence of Action Taken by Holders of Trust Certificates. Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing, or (b) by the record of the holders of Trust Certificates voting in favor thereof at any meeting of holders of Trust Certificates duly called and held in accordance with the provisions of Article Eleven, or (c) by a combination of such instrument or instruments and any such record of such a meeting of holders of Trust Certificates.

Section 10.02. Proof of Execution of Instruments and of Holding of Trust Certificates. Subject to the provisions of Sections 9.02 and 11.05, proof of the execution of any instrument by a holder of Trust Certificates or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof,

or by an affidavit of a witness to such execution sworn to before any such notary or other such officer, or by a guarantee of the signature of such person by a trust company, bank or a member firm of the New York Stock Exchange.

The ownership of Trust Certificates may be proved by the register of such Trust Certificates or by a certificate of the registrar thereof.

The Trustee may require such additional proof of any matter referred to in this Section 10.02 as it shall deem necessary.

The record of any meeting of holders of Trust Certificates shall be proved in the manner provided in Section 11.06.

Section 10.03. Trust Certificates Owned by Company Deemed Not Outstanding. In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any other obligor on the Trust Certificates or by an Affiliate of the Company or any such other obligor shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

Section 10.04. Right of Revocation of Action Taken. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 10.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action, any holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 10.02, revoke such action so far as concerns such Trust Certificate. Except as aforesaid any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

ARTICLE ELEVEN

MEETINGS OF HOLDERS OF TRUST CERTIFICATES

Section 11.01. Purposes for which Meetings of Holders of Trust Certificates May be Called. A meeting of holders of Trust Certificates may be called at any time and from time to time pursuant to the provisions of this Article Eleven for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee or to waive any default hereunder and its consequences, or to take any other action authorized to be taken by holders of Trust Certificates, pursuant to any of the provisions of Article Six;
- (b) to remove the Trustee and appoint a successor trustee pursuant to the provisions of Section 9.09; or
- (c) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Trust Certificates under any other provision of this Agreement or under applicable law.

Section 11.02. Call of Meetings by Trustee. The Trustee may at any time call a meeting of holders of Trust Certificates to take any action specified in Section 11.01, to be held at such time and at such place in the Cities of Houston, Dallas or Fort Worth in the State of Texas, or in the Borough of Manhattan, City and State of New York, as the Trustee shall determine. Notice of every meeting of the holders of Trust Certificates, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed by the Trustee at least 30 days prior to such meeting to the holders of the Trust Certificates at their last addresses appearing upon the registry books.

Section 11.03. Company and Holders of Trust Certificates May Call Meeting. In case at any time the Company pursuant to a resolution of its Board of Directors or the holders of at least 10% in aggregate principal amount of the Trust Certificates then outstanding, shall have requested the Trustee to call a meeting of holders of Trust Certificates to take any action authorized in Section 11.01, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed notice of such meeting within 20 days after receipt of such request, then the Company or the holders of the Trust Certificates in the amount above specified may determine the time and the place in the Cities of Houston, Dallas or Fort Worth in the

State of Texas, or in the Borough of Manhattan, City and State of New York, for such meeting and may call such meeting by mailing notice thereof as provided in Section 11.02.

Section 11.04. Persons Entitled to Vote at Meeting. To be entitled to vote at any meeting of holders of Trust Certificates a person shall (a) be a holder of one or more Trust Certificates or (b) be a person appointed by an instrument in writing as proxy by a holder of one or more Trust Certificates. The only persons who shall be entitled to be present or to speak at any meeting of the holders of the Trust Certificates shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 11.05. Determination of Voting Rights; Conduct and Adjournment of Meeting. Notwithstanding any other provisions of this Agreement, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of holders of the Trust Certificates, in regard to proof of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit. Except as otherwise permitted or required by any such regulations, the holding of Trust Certificates shall be proved in the manner specified in Section 10.02 and the appointment of any proxy shall be proved in the manner specified in said Section 10.02 or by having the signature of the person executing the proxy witnessed or guaranteed by any bank, banker or trust company satisfactory to the Trustee.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by holders of the Trust Certificates as provided in Section 11.03, in which case the Company or the holders of the Trust Certificates calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Trust Certificates represented at the meeting and entitled to vote.

Subject to the provisions of Section 10.03, at any meeting each holder of Trust Certificates or proxy shall be entitled to one vote for each \$1,000 principal amount of Trust Certificates held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Trust Certificate challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right

to vote except as a holder of Trust Certificates or proxy. Any meeting of holders of Trust Certificates duly called pursuant to the provisions of Section 11.02 or 11.03 may be adjourned from time to time, and the meeting may be held as so adjourned without further notice.

At any meeting of holders of Trust Certificates, the presence of persons holding or representing Trust Certificates in an aggregate principal amount sufficient to take action upon the business for the transaction of which such meeting was called shall be necessary to constitute a quorum; but, if less than a quorum be present, the persons holding or representing a majority in aggregate principal amount of the Trust Certificates represented at the meeting may adjourn such meeting with the same effect, for all intents and purposes, as though a quorum had been present.

Section 11.06. Counting Vote and Recording Action of Meeting. The vote upon any resolution submitted to any meeting of holders of Trust Certificates shall be by written ballots on which shall be subscribed the signatures of the holders of Trust Certificates or proxies and the serial number or numbers of the Trust Certificates held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of holders of Trust Certificates shall be prepared by the secretary of the meeting, and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts, setting forth a copy of the notice of meeting and showing that said notice was mailed as provided in Section 11.02. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting, and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 11.07. Call of Meeting Not to Affect Rights of Trustee and Holders of Trust Certificates. Nothing in this Article Eleven contained shall be deemed or construed to authorize or permit, by reason of any call of a meeting of holders of Trust Certificates or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the holders of Trust Certificates under any of the provisions of this Agreement or of the Trust Certificates.

ARTICLE TWELVE

SUPPLEMENTAL AGREEMENTS

Section 12.01. Supplemental Agreements without Consent of Holders of Trust Certificates. The Company, when authorized by resolution or resolutions of its Board of Directors, and the Trustee may from time to time and at any time enter into an agreement or agreements supplemental hereto for one or more of the following purposes:

(a) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions for the protection of the holders of the Trust Certificates as the Board of Directors of the Company and the Trustee shall consider to be for the protection of the holders of Trust Certificates, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions a default or an Event of Default permitting the enforcement of all or any of the several remedies provided in this Agreement as herein set forth; provided, however, that in respect of any such additional covenant, restriction, condition or provisions such supplemental agreement may provide for a particular period of grace after default, which period may but need not be shorter or longer than allowed in the case of other defaults, or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default; and

(b) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental agreement which may be defective or inconsistent with any other provision contained herein or in any supplemental agreement, or to make such other provisions in regard to matters or questions arising under this Agreement which shall not adversely affect the interests of the holders of the Trust Certificates.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental agreement, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental agreement which affects the Trustee's own rights, duties or immunities under this Agreement or otherwise.

Any supplemental agreement authorized by the provisions of this Section 12.01 may be executed by the Company and

the Trustee without the consent of the holders of any of the Trust Certificates at the time outstanding notwithstanding any of the provisions of Section 12.02.

Section 12.02. Supplemental Agreements with Consent of Holders of Trust Certificates. With the consent, evidenced as provided in Section 10.01, of the holders of not less than 66-2/3% in aggregate principal amount of the Trust Certificates at the time outstanding, the Company, when authorized by resolution or resolutions of its Board of Directors, and the Trustee may from time to time and at any time enter into an agreement or agreements supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of any supplemental agreement or of modifying in any manner the rights of the holders of the Trust Certificates; provided, however, that no such supplemental agreement shall (i) extend the fixed maturity of any Trust Certificates, or reduce the rate or extend the time of payment of interest thereon, or reduce the principal amount thereof or any premium thereon, or make the principal thereof or any premium or interest thereon payable in any coin or currency other than that provided in the Trust Certificates, without the consent of the holder of each Trust Certificate so affected, or (ii) reduce the aforesaid percentage of Trust Certificates, the holders of which are required to consent to any such supplemental agreement, without the consent of the holders of all Trust Certificates then outstanding.

Upon the request of the Company, accompanied by a copy of the resolution or resolutions of its Board of Directors certified by its Secretary or an Assistant Secretary authorizing the execution of any such supplemental agreement, and upon the filing with the Trustee of evidence of the consent of holders of Trust Certificates as aforesaid, the Trustee shall join with the Company in the execution of such supplemental agreement unless such supplemental agreement affects the Trustee's own rights, duties or immunities under this Agreement or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental agreement.

It shall not be necessary for the consent of the holders of Trust Certificates under this Section 12.02 to approve the particular form of any proposed supplemental agreement, but it shall be sufficient if such consent shall approve the substance thereof.

Section 12.03. Compliance with Trust Indenture Act; Effect of Supplemental Agreements. Any supplemental agreement executed pursuant to the provisions of this Article Twelve shall comply with the Trust Indenture Act of 1939 as then in effect. Upon the execution of any supplemental agreement pursuant to the provisions of this Article Twelve, this Agreement shall be and be deemed to be modified and amended in

accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Agreement of the Trustee, the Company and the holders of Trust Certificates shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental agreement shall be and be deemed to be part of the terms and conditions of this Agreement for any and all purposes.

Section 12.04. Notation on Trust Certificates. Trust Certificates delivered after the execution of any supplemental agreement pursuant to the provisions of this Article Twelve may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental agreement. If the Trustee shall so determine, new Trust Certificates so modified as to conform, in the opinion of the Trustee, to any modification of this Agreement contained in any such supplemental agreement may be prepared and executed by the Trustee and delivered in exchange for the Trust Certificates then outstanding.

Section 12.05. Evidence of Compliance of Supplemental Agreement to be Furnished Trustee. The Trustee, subject to the provisions of Sections 9.02 and 9.03, may receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental agreement executed pursuant hereto complies with the requirements of this Article Twelve.

ARTICLE THIRTEEN

MISCELLANEOUS

Section 13.01. Rights Confined to Parties and Holders. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

Section 13.02. No Recourse. No recourse under any obligation, covenant or agreement of this Agreement shall be had against any stockholder, officer or director of the Company, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that this Agreement is solely a corporate obligation, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors of the Company, as such, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement,

or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director is hereby expressly waived as a condition of and consideration for the execution of this Agreement.

Section 13.03. Officers' Certificates and Opinions of Counsel; Statements to Be Contained Therein. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Agreement (other than the issuance of Trust Certificates), the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent provided for in this Agreement relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with.

Each certificate or opinion provided for in this Agreement and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Agreement shall include (a) a statement that the person making such certificate or opinion has read such condition or covenant; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such condition or covenant has been complied with; and (d) a statement as to whether or not in the opinion of such person, such condition or covenant has been complied with.

Section 13.04. Conflict of any Provision of Agreement with Trust Indenture Act of 1939. If and to the extent that any provision of this Agreement limits, qualifies or conflicts with another provision included in this Agreement which is required to be included herein by any of sections 310 to 317, inclusive, of the Trust Indenture Act of 1939, such required provision shall control.

Section 13.05. Binding Upon Assigns. Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 13.06. Notices. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed to (a) in the case of the Company, 801 Houston Natural Gas Building, Houston, Texas 77002, or such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) in the case of the Trustee, 910 Travis, Houston, Texas, attention of Walter W. Magruder,

or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

Section 13.07. Effect of Headings. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 13.08. Counterparts. This Agreement has been simultaneously executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 13.09. Date Executed. This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

Section 13.10. Governing Law. The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

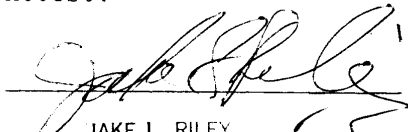
BANK OF THE SOUTHWEST NATIONAL ASSOCIATION,
HOUSTON,

By


Trust Officer

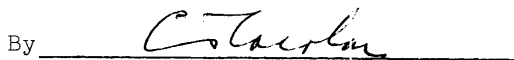
[CORPORATE SEAL]

Attest:


JAKE L. RILEY
Assistant Trust Officer

MARATHON LEASING COMPANY

By


President

[CORPORATE SEAL]

Attest:


Secretary

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared WALTER W. MACGRUDER, ~~and~~ Trust Officer of Bank of the Southwest National Association, Houston, a national banking association, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN under my hand and seal of office this 28th day of Sept., 1971.

CONNIE WAITMAN
Notary Public in and for Harris County, Texas
My Commission Expires June 1, 1973.

Connie Waitman
Notary Public in and for
Harris County, Texas.

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared L.T. CARCIAN, PRESIDENT of Marathon Leasing Company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN under my hand and seal of office this 28th day of Sept., 1971.

CONNIE WAITMAN
Notary Public in and for Harris County, Texas
My Commission Expires June 1, 1973.

Connie Waitman
Notary Public in and for
Harris County, Texas.

EXHIBIT "A"

DESCRIPTION OF TRUST EQUIPMENT

<u>QUANTITY</u>	<u>CLASS</u>	<u>CAPACITY IN GALLONS</u>	<u>INITIALED AND CAR NUMBERS</u>
20 Tank Cars	DOT111A100W5	10,000	RTMX 1000 through 1019
25 Tank Cars	DOT111A100W5	20,000	RTMX 2000 through 2024
14 Tank Cars	DOT111A100W1	16,000	RTMX 1600 through 1613

MARATHON LEASING COMPANY

Tank Car Lease and Service Contract

THIS AGREEMENT, made as of this 30 day of March, 1971, by and between MARATHON LEASING COMPANY, a Delaware corporation, having its principal office at 801 Houston Natural Gas Building, Houston, Harris County, Texas, hereinafter called "Lessor", and The Dow Chemical Company, a Delaware corporation, having its principal office at Midland, Michigan, hereinafter called "Lessee",

W I T N E S S E T H:

Lessor agrees to lease to the Lessee, and the Lessee hereby leases and hires from the Lessor and agrees to accept delivery of, upon the terms and conditions herein set forth, the following described tank cars (hereinafter referred to as the "cars", reference to which shall include singular as well as plural cars) for the use of each of which cars the Lessee agrees to pay to the Lessor the following rental and service charges:

<u>Number of Cars</u>	<u>Type</u>	<u>Lease Price</u>
7A RTMX 1000 thru 1019 20 (Twenty) Cars (formerly Nos. TSVX 10800 through 10819)	DOT 111A 100W5 10,000 Gallon	\$ 205.50 per month
7A RTMX 2000 thru 2024 25 (Twenty-five) Cars (formerly Nos. TSVX 20804 through 20828)	DOT 111A 100W5 20,000 Gallon	\$ 251.35 per month
7A RTMX 1600 thru 1613 14 (Fourteen) Cars (formerly Nos. TSVX 16005 through 1613)	DOT 111A 100W1 16,000 Gallon	\$ 249.78 per month

1613

7A

Term. The term of this lease respecting each car commences on the date of delivery of such car to Lessee but such delivery shall not commence before March ^{20 89}30, 1971 (hereinafter called "Effective Date") and shall continue in effect for a period of fifteen years, provided that after the initial one hundred and twenty months of lease, Lessee or Lessor may terminate this lease upon giving six months prior written notice, subject to the rates of the above rate schedule. Notwithstanding the expiration or termination of this lease by notice or otherwise, it shall continue in effect with regard to each car until returned to possession of Lessor.

Payment. Lessee agrees to pay said rentals and service charges to Marathon Leasing Company at the principal office located in Houston, Harris County, Texas, on the first day of each calendar month in advance, without deduction, except that the Lessee shall pay in advance on the delivery of each car respectively a pro rata portion of one month's rent for the period intervening the date of delivery and the first of the next succeeding calendar month and shall pay only the pro rata portion of such monthly charge attributable to any fractional month accruing at the termination of this lease.

Delivery. Each of the cars shall be delivered to the Lessee at such points and dates as will be designated by Lessee. The obligation of Lessor to furnish the cars shall be subject to all causes reasonably beyond the control of Lessor, including, but not limited to, delays caused by fire, labor difficulties, delays of carriers and materialmen or governmental authority; and Lessor shall not be liable for any damages by reason of any such delay.

Inspection of Car. Each of the cars shall be subject to Lessee's inspection before loading; and the loading of such car shall constitute acceptance thereof by Lessee, and shall be conclusive evidence of the fit and suitable condition of such car for the purpose of transporting the commodities then and thereafter loaded therein.

Damage to Car Resulting from Lading. In the event the tank of any of the cars, or the fittings or appurtenances thereto, shall become damaged by the commodity loaded therein, Lessee agrees to assume the responsibility for such damage.

Alteration and Lettering. Lessee will preserve the cars in good condition and will not in any way alter the physical structure of the cars without the advance approval in writing of Lessor, which approval will not be unreasonably withheld. Lessee will place no lettering or marking of any kind upon the cars without Lessor's prior written consent, which approval will not be unreasonably withheld, except that, for the purpose of evidencing the operation of the cars in Lessee's service hereunder, Lessee will be permitted to board, placard or stencil the cars with letters not to exceed two inches (2") in height.

Maintenance. Lessor agrees to maintain each of the cars in good condition and repair according to the Code of Rules of the Association of American Railroads, and Lessee agrees to forward the cars to the shops of Lessor for periodic maintenance repairs as may be directed by Lessor. No repairs to any of the cars shall be made by Lessee without Lessor's prior written consent, except that Lessee shall at its expense replace any removable tank parts (dome

covers, outlet caps, etc.) if lost or broken. If any of the cars shall be completely destroyed, or if the physical condition of any car shall become such that such car cannot be operated in railroad service as determined by the parties, then either party may at its option cancel this lease as to such car as of the date of which such event occurred. When cars are placed in a shop for maintenance and/or repair at the direction of Lessor, the rental charges on each car shall cease on the date of notification by Lessee and will be re-instituted on the date such car is forwarded from shop and/or date such car is ready to leave such shop. If a car is in need of repairs while in route and is placed in railroad shops for repair, then after the lapse of five days the rent on the cars so placed shall cease until such cars are returned to Lessee's service. If any repairs are required as a result of the misuse by or negligence of Lessee, its consignee, agent or sublessee, the rental charge shall continue during the rental period.

Indemnity. Lessee will indemnify Lessor against any loss, damage or injury caused during the term of this lease by any of the cars hereby leased, or to or by the contents thereof, howsoever occurring, except any loss, liability, claim, damage or expense which is attributable to the fault or neglect of the Lessor or for which a railroad or railroads have assumed full responsibility therefor, and will indemnify Lessor against any loss or damage suffered by the Lessor by reason of same.

Return of Cars. Upon the expiration or termination of this lease Lessee agrees to return each of the cars in good working order, ordinary wear and tear excepted, to Lessor at the loading point or at a point mutually agreed upon, free from residue, and to give Lessor advance written notice of such return. Lessee shall on demand reimburse Lessor for the cost of cleaning any cars containing residue.

Reports and Mileage. Lessor shall collect all mileage earned by the cars and shall credit to the rental account of Lessee for each accounting period (as defined) such mileage earned by the cars while in the service of Lessee, as and when received from the railroads according to, and subject to, all rules of the tariffs of the railroads, but only to the extent of the aggregate rental charges payable hereunder for such year. The term "accounting period", as used in this contract, is defined to mean each period of twelve (12) consecutive months within the term of this contract ending on the anniversary of the effective date hereof, and any period from the last such twelve (12) months period to the date of expiration of this contract. Lessee shall give Lessor monthly reports of the movements of the cars, giving destination, date and routing of each movement.

Excess Empty Mileage. Lessee agrees so to use the cars that their mileage under load shall be equal to their mileage empty upon each railroad over which the cars move, and, upon the expiration or termination of this agreement, should the empty mileage of the cars upon any railroad exceed

the loaded mileage of the cars on such railroad, Lessee agrees to pay Lessor, as an additional rental, for such excess of empty mileage, at the rate established by the tariffs of the railroad upon which such excess is incurred. Lessor agrees to furnish to Lessee proof that it has been billed by the railroad for such mileage.

Taxes and Liens. Lessor agrees to pay all property taxes levied upon the cars and to file all property tax reports relating thereto.

Assignment. Lessee agrees to use the cars exclusively in Lessee's own service within the boundaries of the continental United States (exclusive of Alaska and Hawaii), Canada, and Mexico, and to make no transfer, or assignment of this agreement, or sublease of the cars, without Lessor's prior written consent, except that Lessee shall have the right to sublease any of the cars, for trip lease, or otherwise sublease cars to its customers, or to its suppliers, ^{OR OTHERS 70-85} and to cause such cars so subleased to be boarded or placarded with the names of the sublessees in accordance with the provisions of demurrage tariffs lawfully in effect, where the sole purpose of such subleasing is to obtain an exemption from demurrage for said cars so subleased, provided, however, that notwithstanding any such sublease, Lessee shall continue to remain liable to Lessor under this lease, and provided further that Lessor shall have the right to withdraw this privilege of subleasing at any time.

Subject always to the foregoing, this lease inures to the benefit of, and is binding upon, the Lessor, its successors and assigns, and the Lessee, its successors and assigns.

~~Lessor~~ may not assign this Lease without the prior written consent of Lessee, which consent may not be unreasonably withheld; provided, however, that the Lessor may assign this Lease and the rentals payable thereunder without such written consent as security for any loan or loans which Lessor may make.

Default. It is mutually agreed that the time of payment of rentals is of the essence of this contract and that if the Lessee shall make default in the payment of rentals for the cars at the time when same become due and payable or shall make default in the performance or observance of any of the other agreements herein contained and by Lessee to be performed or observed and such default is not cured or reasonable efforts are not made to cure the same within fifteen (15) days after written notice is given by the Lessor to the Lessee, or there shall be filed by or against Lessee a petition in bankruptcy or for reorganization under the Bankruptcy Law or there shall be a receiver appointed of any part of Lessee's property or Lessee shall make a general assignment for the benefit of creditors and the same is not set aside or cancelled or reasonable efforts are not made to set aside and cancel the same within fifteen (15) days after written notice is given by the Lessor to the Lessee, then and in any of said events Lessor, at its election, may terminate this lease and repossess itself of said cars and this lease shall thereupon

become and be terminated, or Lessor may repossess itself of said cars and relet the same or any part thereof to others for such rent and upon such terms as it may see fit; and if a sufficient sum shall not thus be realized after repaying all expenses of retaking and reletting said cars and collecting the rental thereof, to satisfy the rentals herein reserved, the Lessee agrees to satisfy and pay the deficiency from time to time upon demand. The obligation to pay such deficiency shall survive such termination of this lease and/or such retaking of the cars. Lessee shall without expense to Lessor assist it in repossessing itself of said cars and shall for a reasonable time if required furnish suitable trackage space for the storage of said cars. The rights and remedies herein given to Lessor shall in no way limit its rights and remedies given or provided by law or in equity.

Additional Provisions. The Lessee agrees to use the cars, upon each railroad over which the cars shall move, in accordance with the then prevailing tariffs to which each such railroad shall be a party; and, if the operation or movements of any of the cars, during the term hereof, shall result in any charges being made against Lessor by any such railroad, the Lessee shall pay Lessor for such charges, within the period prescribed by, and at the rates and under the conditions established by, said then prevailing tariffs.

Lessor will be responsible for the new cars empty from point of manufacture to Freeport, Texas. Any additional cost to move the cars to a more distant point will be for the account of Lessee.

Lessee shall have the right and option at any time by giving written notice to Lessor within SIX (6) MONTHS ⁷⁰⁻²¹⁰ from the date of this lease (~~but not later than August 1, 1971~~) to purchase for cash payable within 30 days from the date notice is given the cars at a price to be negotiated between the parties but not to exceed the cost on which the rental ⁷⁰⁻²¹⁰ rate for the cars was based plus ONE-HALF ($\frac{1}{2}$) OF ONE (1%) PER CENT.

Lessor hereby warrants to the Lessee, that at the time of delivery of the above described railroad equipment to the Lessee, Lessor is the lawful owner of the railroad equipment; has good and indefeasible legal title thereto, and has the right to lease the railroad equipment to the Lessee. Lessor further warrants and agrees to defend the title to said railroad equipment at all times and to reimburse and hold the Lessee harmless from all damages and expenses which Lessee may suffer by reason of any restriction, encumbrance or defect in such title. So long as Lessee shall not be in default under this Lease, Lessee shall peacefully and quietly hold and possess and use the railroad equipment during the term hereof and the Lessee shall have the right to cancel this lease agreement because of any breach of this covenant by the Lessor.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed and delivered the day and year first above written.

MARATHON LEASING COMPANY

ATTEST:

James J. O'Hara
Secretary

By

7 R Duncanson
Vice President

THE DOW CHEMICAL COMPANY

ATTEST:

By

J. B. Brown
Vice President
In Charge of Production
Chemical Division

Secretary